

- “1. The compensability of claim as arising out of and in the course of claimant’s employment with respondent, and whether certain defenses apply.
- “2. Whether the Administrative Law Judge exceeded his jurisdiction in granting the relief requested at the preliminary hearing.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and the arguments and the briefs of the parties, the Appeals Board finds that the October 10, 1996, Order did not exceed the jurisdiction of the Administrative Law Judge and should be affirmed.

A preliminary hearing was held on October 10, 1996, before the Administrative Law Judge. Claimant requested temporary total disability compensation, vocational rehabilitation, medical treatment, and payment of certain medical bills and expenses. The October 10, 1996, Order from which respondent appeals does not address the preliminary hearing issues of temporary total disability compensation and medical treatment. Instead, the Administrative Law Judge appointed a neutral physician to perform an evaluation on claimant pursuant to K.S.A. 44-516. This is an order which an Administrative Law Judge is statutorily granted to make. Accordingly, the Appeals Board finds that the Administrative Law Judge did not exceed his jurisdiction in making said order.

The other issue raised by respondent concerns the compensability of the claim, specifically whether claimant's injury arose out of and in the course of his employment with respondent. With regard to this issue we note that at the preliminary hearing counsel for respondent was specifically asked by the Court whether compensability was an issue to which respondent's counsel replied "No". (Prel. Hr'g at 4 & 5). At the conclusion of the preliminary hearing, after claimant's testimony, there appears the following colloquy between the Court and counsel:

"THE COURT: I'll go ahead and authorize Dr. Mills to do an IME. This is a new law case where voc rehab isn't really an issue at this point. I'm not going to authorize any additional treatment at this time. We haven't met the statutory requirements for TTD. All I can see is on the bills with Bumguardner if you want to apply your unauthorized towards that you can do that. Anything further? And I would suggest getting it set up for pretrial."

"MR. DONLEY: The one thing you didn't address was whether there was a subsequent aggravation with Ronco or whether you would like the doctor to address that. I don't know. But that's the only other issue that I can see."

"THE COURT: I just want to know what he's got right now. If you want to explore that avenue, I guess you can do it. If the ratings come out pretty close to what they were before, I don't think it makes much difference. Does that answer your question? Probably not the way you wanted it."

"MR. DONLEY: I wasn't that particular. I just wanted to make sure it was addressed one way or the other." (Prel. Hr'g at 43 & 44).

The Administrative Law Judge did not order respondent to pay temporary total disability or medical expenses. Likewise, the Administrative Law Judge did not order respondent to provide medical treatment or vocational rehabilitation benefits. The Order from which respondent appeals only appoints a neutral physician to perform an independent medical evaluation on claimant pursuant to K.S.A. 44-516. The Administrative Law Judge did not make a finding that claimant's injury arose out of and in the course of his employment with respondent. A finding of compensability is not implicit from an Order appointing a medical evaluation pursuant to K.S.A. 44-516. Accordingly, the issue concerning compensability is not before the Appeals Board.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the October 10, 1996, Order entered by Administrative Law Judge Jon L. Frobish should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: David L. Nelson, Wichita, KS
P. Kelly Donley, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director